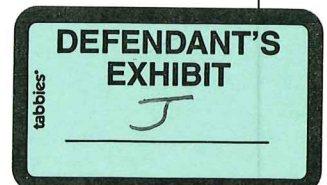


SPITZ, M.D., WERNER  
03/20/2018

Pages 1-4

<p>Page 1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 GORDA DUNIGAN, as Personal</p> <p>6 Representative for the ESTATE OF</p> <p>7 JAMES DUNIGAN, Deceased,</p> <p>8 Plaintiff,</p> <p>9 vs. Case No.1:16-CV-01324</p> <p>10 Hon. Ellen S. Carmody</p> <p>11 BRONSON METHODIST HOSPITAL,</p> <p>12 Defendant,</p> <p>13 and</p> <p>14 GORDA DUNIGAN, as Personal</p> <p>15 Representative of the ESTATE OF</p> <p>16 JAMES DUNIGAN, Deceased,</p> <p>17 Plaintiff,</p> <p>18 vs. Case No. 1:16-CV-01325</p> <p>19 DEREK NUGENT, et al, Hon. Ellen S. Carmody</p> <p>20 Defendants.</p> <p>21 /</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 JOHN C. O'LOUGHLIN</p> <p>2 Smith, Haughey, Rice &amp; Roegge, P.C.</p> <p>3 100 Monroe Center Street, NW</p> <p>4 Grand Rapids, Michigan 49503</p> <p>5 (616) 774-8000</p> <p>6 joloughlin@shrr.com</p> <p>7 Appearing (Telephonically) on behalf of the</p> <p>8 Defendant, Bronson Methodist Hospital.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																														
<p>Page 2</p> <p>1 The Deposition of WERNER SPITZ, M.D., F.C.A.P.,</p> <p>2 Taken at 23001 Greater Mack Avenue,</p> <p>3 St. Clair Shores, Michigan,</p> <p>4 Commencing at 2:17 p.m.,</p> <p>5 Tuesday, March 20, 2018,</p> <p>6 Before Linda S. Wilson, CSR-0973.</p> <p>7</p> <p>8 APPEARANCES:</p> <p>9</p> <p>10 DONALD H. DAWSON, JR.</p> <p>11 Fieger, Fieger, Kenney &amp; Harrington</p> <p>12 19390 West Ten Mile Road</p> <p>13 Southfield, Michigan 48075</p> <p>14 (248) 355-5555</p> <p>15 d.dawson@fiegerlaw.com</p> <p>16 Appearing on behalf of the Plaintiff.</p> <p>17</p> <p>18 ALLAN C. VANDER LAAN</p> <p>19 Cummings, McClorey, Davis &amp; Acho, P.L.C.</p> <p>20 2851 Charlevoix Drive, SE, Suite 327</p> <p>21 Grand Rapids, Michigan 49546</p> <p>22 (616) 975-7470</p> <p>23 avanderlaan@cnda-law.com</p> <p>24 Appearing (Telephonically) on behalf of the</p> <p>25 Defendants, Nugent, et al.</p>	<p>Page 4</p> <p>1 INDEX TO EXAMINATIONS</p> <p>2</p> <table border="1"> <thead> <tr> <th>3 Witness</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>4 WERNER SPITZ, M.D. F.C.A.P.</td> <td></td> </tr> <tr> <td>5</td> <td></td> </tr> <tr> <td>6 EXAMINATION</td> <td>5</td> </tr> <tr> <td>7 BY MR. O'LOUGHLIN:</td> <td></td> </tr> <tr> <td>8 EXAMINATION</td> <td>81</td> </tr> <tr> <td>9 BY MR. VANDERLAAN:</td> <td></td> </tr> <tr> <td>10 EXAMINATION</td> <td>85</td> </tr> <tr> <td>11 BY MR. DAWSON:</td> <td></td> </tr> <tr> <td>12 RE-EXAMINATION</td> <td>86</td> </tr> <tr> <td>13 BY MR. O'LOUGHLIN:</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15 INDEX TO EXHIBITS</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17 Exhibit</td> <td>Page</td> </tr> <tr> <td>18 (Exhibit attached to transcript.)</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20 DEPOSITION EXHIBIT 1</td> <td>21</td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </tbody> </table>	3 Witness	Page	4 WERNER SPITZ, M.D. F.C.A.P.		5		6 EXAMINATION	5	7 BY MR. O'LOUGHLIN:		8 EXAMINATION	81	9 BY MR. VANDERLAAN:		10 EXAMINATION	85	11 BY MR. DAWSON:		12 RE-EXAMINATION	86	13 BY MR. O'LOUGHLIN:		14		15 INDEX TO EXHIBITS		16		17 Exhibit	Page	18 (Exhibit attached to transcript.)		19		20 DEPOSITION EXHIBIT 1	21	21		22		23		24		25	
3 Witness	Page																																														
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SPITZ, M.D., WERNER  
03/20/2018

Pages 25–28

<p style="text-align: right;">Page 25</p> <p>1 way this man was handled, this man was treated, this</p> <p>2 man was confronting when he was handled by a number of</p> <p>3 people who were not necessarily treating him like a</p> <p>4 patient, not like -- and like a sick patient, like a</p> <p>5 patient who was in the throes of death. They did not</p> <p>6 recognize it, and they should have recognized it.</p> <p>7 That is my opinion.</p> <p>8 Q. You don't claim to be an expert in emergency medicine,</p> <p>9 correct?</p> <p>10 A. No, I'm not an emergency medicine physician.</p> <p>11 Q. You don't claim to be an expert in emergency nursing,</p> <p>12 correct?</p> <p>13 A. No, that is correct.</p> <p>14 Q. You don't claim to be an expert in radiology, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You don't claim to be an expert in hospital security,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. You don't claim to be an expert in law enforcement or</p> <p>20 the conduct of law enforcement officers, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you claim to be an expert in the law known as</p> <p>23 EMTALA, the Emergency Medical Treatment and Active</p> <p>24 Labor Act?</p> <p>25 A. Yes, I'm aware of such a thing, but I have not ever</p>	<p style="text-align: right;">Page 27</p> <p>1 really very little connected to him falling out of a</p> <p>2 bus when he sustained the fall and hit something on</p> <p>3 cement, as he indicated.</p> <p>4 It was a different kind of chest pain</p> <p>5 altogether, and that chest pain is notorious for</p> <p>6 fearing doom. That pain is a different kind of pain.</p> <p>7 That is the pain of a heart attack.</p> <p>8 Q. Upon what do you base that statement?</p> <p>9 A. On the fact that he had manifestations of congestive</p> <p>10 heart failure. His breathing, his sickening type of</p> <p>11 snoring that is not that he is sleeping, but it is a</p> <p>12 kind of snoring, if you will, where fluids in the lung</p> <p>13 go up and down the airway every breath he takes. That</p> <p>14 is not necessarily annoying for others to hear. That</p> <p>15 is not the issue. The issue is that it scared the</p> <p>16 daylights out of the individual who suffers it.</p> <p>17 It is a type of pain is associated with</p> <p>18 asphyxiation. Asphyxiation is always a very fearful</p> <p>19 experience because here the lung contains fluid. When</p> <p>20 the fluid is moved by breathing up and down, there is</p> <p>21 in addition to the noise that this makes, there is</p> <p>22 also a lack of air in the lungs substituted for</p> <p>23 fluids, so-called edema fluids, which is none other</p> <p>24 than froth.</p> <p>25 And the officers looked at all that, stated</p>
<p style="text-align: right;">Page 26</p> <p>1 made use of that type of information. So I know of</p> <p>2 it, but I really don't know a whole lot of it.</p> <p>3 Q. When you say you haven't made use of it, that means</p> <p>4 you haven't had to worry about complying with EMTALA?</p> <p>5 A. Or not complying. I don't know enough about EMTALA to</p> <p>6 know how to handle that. I don't see patients in my</p> <p>7 practice.</p> <p>8 Q. Correct. What is your understanding of why</p> <p>9 Mr. Dunigan came to the Emergency Department in the</p> <p>10 early morning hours of May 6th, 2016?</p> <p>11 A. Well, he had chest pain he claims, and he came because</p> <p>12 it was for him a fearful experience. That is what</p> <p>13 took him to the hospital. He, in fact, was in a</p> <p>14 condition which in his mind required transport to the</p> <p>15 hospital, like you said, in the middle of the</p> <p>16 nighttime, and it was a fearful experience for him, so</p> <p>17 he called for an ambulance to take him.</p> <p>18 Q. What is your understanding of how long he had had this</p> <p>19 chest pain?</p> <p>20 A. He indicates that, as a layperson, I have to say that,</p> <p>21 he says that -- or he thought there is a connection</p> <p>22 between his chest pain and the bruise he had on his</p> <p>23 chest and his actual pain, that that resulted from</p> <p>24 internal bleeding he thought, and that he -- chest</p> <p>25 pain from -- the real reason for the chest pain was</p>	<p style="text-align: right;">Page 28</p> <p>1 it in their packing him into the seat in the police</p> <p>2 vehicle, did nothing about it. They said: Oh, he is</p> <p>3 faking. Oh, we know well what to expect from him, and</p> <p>4 so on and so forth. The officers know or should know</p> <p>5 what that means. I know they are not physicians, but</p> <p>6 they should know that because it occurs a lot more</p> <p>7 often than we want.</p> <p>8 Q. Doctor, if we can, for the sake of addressing</p> <p>9 different periods of time, break this ED presentation</p> <p>10 down into the period of time from when Mr. Dunigan was</p> <p>11 picked up by the ambulance to the time that he was</p> <p>12 discharged from the Emergency Department into the</p> <p>13 waiting room, when he was wheeled into the waiting</p> <p>14 room in a wheelchair. Do you understand that frame of</p> <p>15 time I'm talking about?</p> <p>16 A. Well, it's kind of a long question which requires</p> <p>17 probably a long answer, but I hope I will comply with</p> <p>18 your request. If I don't, so please tell me.</p> <p>19 Q. Let me go back and get some foundation. Did you</p> <p>20 review the videos that you received as listed in your</p> <p>21 report?</p> <p>22 A. Yes, I did review that. I reviewed the videos. To</p> <p>23 answer your question, I would like to state that the</p> <p>24 video clearly shows, or one of them, clearly shows a</p> <p>25 restless -- I mean a restless individual who aimlessly</p>

SPITZ, M.D., WERNER  
03/20/2018

Pages 57-60

<p style="text-align: right;">Page 57</p> <p>1 jail, but maybe he had hopes that they would provide</p> <p>2 him with more medical care. I don't know. He did not</p> <p>3 want to leave Bronson because that is abundantly</p> <p>4 documented in the various depositions that I read.</p> <p>5 Q. Are you aware of any evidence indicating that</p> <p>6 Mr. Dunigan ever complained of a medical problem or</p> <p>7 asked for medical care after he was wheeled into the</p> <p>8 waiting room?</p> <p>9 A. I'm unaware whether he asked for additional medical</p> <p>10 care. Maybe he didn't know that there was such</p> <p>11 available, but it's obvious that that is what he</p> <p>12 needed. Many times in my -- to my knowledge, patients</p> <p>13 don't know that they can get medical care for whatever</p> <p>14 they have, an ailment or a condition. They may not</p> <p>15 know. He may not have known that he should -- he has</p> <p>16 to ask for medical care. I really don't know that.</p> <p>17 But the fact is that he wasn't given that</p> <p>18 choice. He wasn't asked to come back in the room, in</p> <p>19 the emergency room. When he was seen walking around</p> <p>20 aimlessly holding on to furniture, obviously something</p> <p>21 is wrong with this man. So as a doctor, you would</p> <p>22 kind of frown that somebody, a nurse or a health</p> <p>23 provider, would not point out to the physician in the</p> <p>24 emergency room or other personnel that there is</p> <p>25 something wrong with that patient that should be</p>	<p style="text-align: right;">Page 59</p> <p>1 at Bronson saw Mr. Dunigan in a condition that</p> <p>2 indicated he needed medical attention after he was</p> <p>3 discharged to the waiting room?</p> <p>4 A. No, I'm not aware.</p> <p>5 Q. Thank you. What is your understanding of</p> <p>6 Mr. Dunigan's ability to ambulate prior to the time he</p> <p>7 fell getting off the bus on May 5th?</p> <p>8 A. I don't know what his walking -- I have no idea what</p> <p>9 his condition caused him to -- by way of ability to</p> <p>10 walk. I can't imagine that it did anything other</p> <p>11 than -- the heart condition that he had is likely to</p> <p>12 have caused him pain from walking, from exerting, from</p> <p>13 being exerted. But I don't know where I would have</p> <p>14 found that, that what happened on the day before, on</p> <p>15 the day before he went to Bronson. But stress is not</p> <p>16 exactly a good thing for somebody with that kind of</p> <p>17 heart condition that Mr. Dunigan had.</p> <p>18 Q. Based upon your review of everything you have seen in</p> <p>19 this case are you aware that Mr. Dunigan had a history</p> <p>20 of a stroke with hemiparesis?</p> <p>21 A. He had some difficulty walking because of that stroke</p> <p>22 because one side was weaker than the other, but</p> <p>23 whether they really interfered with his ability to</p> <p>24 walk with a cane I am not aware.</p> <p>25 Q. We are back to that. You don't know what his ability</p>
<p style="text-align: right;">Page 58</p> <p>1 explored. But nothing like that ever happened. The</p> <p>2 one thing that was done was an x-ray, which excluded</p> <p>3 trauma.</p> <p>4 Q. I'm becoming convinced that you are not capable of</p> <p>5 answering my questions, Doctor. But I'm just going to</p> <p>6 keep asking them.</p> <p>7 A. Go ahead.</p> <p>8 Q. I'm going to have to ask the same one again. Are you</p> <p>9 aware of any evidence indicating that Mr. Dunigan ever</p> <p>10 asked for any type of medical care after he went to</p> <p>11 the waiting room?</p> <p>12 A. I've already answered that. I said no, I'm not.</p> <p>13 Q. Thank you. Please stop there. Are you aware of any</p> <p>14 evidence that any physician or nurse saw any behavior</p> <p>15 in Mr. Dunigan which indicated that he needed medical</p> <p>16 attention?</p> <p>17 A. Any nurse?</p> <p>18 MR. DAWSON: After he was discharged from</p> <p>19 the ED?</p> <p>20 MR. O'LOUGHLIN: Correct.</p> <p>21 MR. DAWSON: Go ahead, Doctor.</p> <p>22 A. Any nurse at Bronson or any doctor at Bronson, or am I</p> <p>23 included in that too, because I saw him.</p> <p>24 BY MR. O'LOUGHLIN:</p> <p>25 Q. Are you aware of any evidence that any nurse or doctor</p>	<p style="text-align: right;">Page 60</p> <p>1 was to walk or ambulate with or without a cane prior</p> <p>2 to May 6th, 2016, true?</p> <p>3 A. No. I think with a cane he was able to walk. Maybe</p> <p>4 not as well as he did before he had the stroke, but he</p> <p>5 walked with a cane, or was able to walk with a cane.</p> <p>6 I can see him walk in the waiting room.</p> <p>7 Q. Do you know whether he was able to walk any better</p> <p>8 than he was when you saw him in the waiting room on</p> <p>9 the day before?</p> <p>10 A. I don't know how he was walking the day before, but in</p> <p>11 general he was able to walk. He was able to walk even</p> <p>12 on May 6th because that is when I saw him.</p> <p>13 Q. Did you say was or wasn't?</p> <p>14 A. Was. He was walking okay. He was walking. He was</p> <p>15 holding on to furniture, but that is explainable by</p> <p>16 his condition on that day, because on the 6th he was</p> <p>17 different than on -- he may have been different than</p> <p>18 on May 5th.</p> <p>19 Q. You don't know one way or the other, true?</p> <p>20 A. I know how he behaved on May 6th. I'm not so sure</p> <p>21 whether that applies to May 5th as well.</p> <p>22 Q. That is the point of my question, Doctor. Do you know</p> <p>23 whether his ability to ambulate as you saw it on May</p> <p>24 6th in the waiting room was any different than his</p> <p>25 ability to ambulate on May 5th before he fell getting</p>